

United States Senate

WASHINGTON, DC 20510

November 21, 2025

The Honorable Andrew Ferguson
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Ferguson:

I write to request that the Federal Trade Commission (FTC) open an investigation into whether the refund policy of the infant formula manufacturer, ByHeart, is unfair and deceptive under Section 5 of the FTC Act.

According to the U.S. Food and Drug Administration (FDA), all ByHeart Whole Nutrition Infant Formula products have been recalled due to FDA's ongoing outbreak investigation of infant botulism—a serious medical condition that can be fatal—which appears to have originated with ByHeart formula products contaminated with *Clostridium botulinum* (third-party testing has confirmed presence of *Clostridium botulinum* in opened and unopened ByHeart products).

Despite the FDA urging consumers to cease using all ByHeart Whole Nutrition Infant Formula products, and directing retailers to stop selling or storing such products, ByHeart adopted a limited refund policy that appears to fail the FTC's fairness test and may constitute an unfair and deceptive practice under the FTC Act:

Orders placed on [ByHeart.com](https://www.byheart.com) on or after October 1, 2025 will be eligible to receive a refund. Please call us at [866-201-9069](tel:866-201-9069) and our team will assist you. We're available 24/7.

- Customers will receive a refund of up to two units of ByHeart product—cans or Anywhere Packs.
- First-time customers will receive a full refund on their first order, staying true to our ByHeart Promise.

If you purchased ByHeart through one of our retail partners or Amazon, please contact the retailer directly and they will assist you with your refund options.

ByHeart's refund policy fails to fully remunerate all purchasers of contaminated formula; limits compensation in a disparate manner—despite all ByHeart formula product being recalled nationwide—and abdicates its responsibility to consumers who purchased contaminated products through brick and mortar or online retailers. A comprehensive manufacturing failure that results in a complete recall demands the offender institute a comprehensive and complete safety-related refund policy. Yet, ByHeart has done the opposite: adopting a refund policy that imposes arbitrary limits, shifts the burden to customers and contradicts company marketing promises.

Customers who purchased far more than two units could face significant financial loss under ByHeart's restrictive refund policy. Limiting refunds to only “up to two units of ByHeart product” substantially injures the typical infant formula consumer, who often purchase expensive, essential infant nutrition products in bulk to save money.

Forcing consumers who purchased ByHeart products at retailers that carry their formula also imposes substantial costs on harmed customers, forcing each individual to waste valuable time and resources navigating a patchwork of third-party refund policies without any guarantee of being made whole—given the nature of this safety-related nationwide recall that was the fault of the manufacturer, ByHeart, rather than any retailer that stocks ByHeart products.

Parents who purchased ByHeart products to feed vulnerable infants cannot reasonably be expected to have taken action to avoid harm, since these consumers had no way of knowing or determining that ByHeart powdered formula was contaminated with *Clostridium botulinum*—and were in fact assured by the company that there was no positive test from sealed products, until that assertion became false—and the nature of this essential nutrition product makes switching infant formula a complex, costly and disruptive consumer action.

Given ByHeart’s demonstrated lack of knowledge of which types of products were contaminated, along with its history of disputing third-party laboratory tests, ByHeart’s decision to limit eligibility to orders placed after October 1, 2025—even though possibly contaminated product may have been purchased prior to that date—represents an arbitrary and deceptive limitation that threatens to leave some harmed consumers without any compensation.

ByHeart’s own promotional and marketing claims, which have included phrases like “satisfaction guaranteed,” “full refunds” and a commitment to a “no-compromise” infant nutrition experience, appear to be an effort to deceive prospective customers into believing the company is not the type of corporation that would only provide restrictive, discriminatory and limited refunds in the event a major recall triggered by a multistate infant botulism outbreak.

Parents who trusted ByHeart to produce safe and nutritious infant formula are experiencing anxiety and fear over the spreading outbreak of infant botulism that, to date, has resulted in at least 31 babies in 15 States being hospitalized and treated. These consumers should not have their fears compounded by an irresponsible manufacturer that refuses to implement a full and fair refund policy that makes consumers whole in the most efficient manner possible.

That is why I am asking for the FTC to launch an investigation into whether ByHeart’s refund policies and practices violate Section 5 of the FTC Act, and if that is confirmed, to hold ByHeart accountable to do right by its customers, willingly or unwillingly.

Sincerely,



Tammy Duckworth
United States Senator